UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/851,029
Filing Date: May 07, 2001
Appellant(s): ADDANTE, FRANK

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Thomas A. Rozylowicz
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 07/21/2010 and 09/07/2010 appealing from the

Office action mailed 12/21/2009.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application: Claims 78-88 are pending.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner

except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN

REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW

GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the

Appendix to the appellant's brief.

(8) Evidence Relied Upon

2002/0072965	MERRIMAN ET AL.	06-2002
WO98/57285	MESSER	12-1998
5,933,811	ANGLES ET AL.	08-1999
5,796,952	DAVIS ET AL.	08-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 78, 80-83 are 85-87 stand rejected under 35 U.S.C. 103(a) as being unpatentable

over Merriman et al. (US 2002/0072965) in view of Messer et al. (WO 98/57285).

The Merriman et al. reference disclose a method of tracking a click-through

exposure via a cookie from an ad server once a user access an affiliate website via a

banner ad.

Regarding claim 78, the Merriman et al. reference discloses a method of compiling

transaction information comprising:

a) formatting a cookie at an ad server, the cookie including information related to a selection of an advertisement at a content site (§ 18, 19, 26 and 39);

b) storing a cookie at a user node of a user who made the selection ((§ 18, 19, 26 and 39); and

c) providing the cookie from the user node to the ad server whenever the user makes a transaction at a sale site associated with the advertisement ((§ 18, 19, 26 and 39).

The Merriman et al. reference discloses the claimed invention but does not explicitly disclose the feature of tracking subsequent sales transactions at the affiliate/merchant sites. In an analogous art, Messer et al. teach the process of tracking subsequent sales at a merchant sites from users directed from a content site via a click trough of an ad banner and gaining of specific offer compensation (abstract, page 5, lines 23-32; page 7, line 20 to page 8, line 14; page 13, line 24 to page 15, line 16). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of the Merriman et al. reference. One would have been motivated to modify the method of compiling transaction information since collecting information regarding the various sales behavior would allows for a more accurate tracking and monitoring of the viewing and transaction session of the user and gain the benefit of a tier/scaling payment schematic.

Regarding claim 80, Merriman et al. and Messer disclose the method of compiling transaction information of claim 78 further comprising providing a query string from the user node to the ad server, wherein the query string includes information related to the transaction made at the sale site (Messer: page 13, line 24 to page 15, line 16). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of the Merriman et al. reference. One

would have been motivated to modify the method of compiling transaction information since collecting information regarding the various sales behavior would allows for a more accurate tracking and monitoring of the viewing and transaction session of the user and gain the benefit of a tier/scaling payment schematic.

Regarding claim 81, Merriman et al. and Messer disclose the method of compiling transaction information of claim 80 wherein the information related to the transaction includes an identification of a purchased product (Messer: page 13, line 24 to page 15, line 16). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of the Merriman et al. reference.   One would have been motivated to modify the method of compiling transaction information since collecting information regarding the various sales behavior would allows for a more accurate tracking and monitoring of the viewing and transaction session of the user and gain the benefit of a tier/scaling payment schematic targeted to specific offer compensation.

Regarding claim 82, Merriman et al. and Messer disclose the method of compiling transaction information of claim 81 wherein the information related to the transaction includes a purchase price of the purchased product (Messer: page 13, line 24 to page 15, line 16). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of the Merriman et al. reference.   One would have been motivated to modify the method of compiling transaction information since collecting information regarding the various sales behavior would allows for a more accurate tracking and monitoring of the viewing and transaction session of the user and gain the benefit of a tier/scaling payment schematic targeted to specific offer compensation.

Regarding claim 83, Merriman et al. and Messer disclose the method of compiling transaction information of claim 80 further comprising recording at least a portion of the information related to the selection of the advertisement and at least a portion of the information related to the transaction into a data structure for the transaction information in the transaction database (Messer: page 13, line 24 to page 15, line 16). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of the Merriman et al. reference. One would have been motivated to modify the method of compiling transaction information since collecting information regarding the various sales behavior would allows for a more accurate tracking and monitoring of the viewing and transaction session of the user and gain the benefit of a tier/scaling payment schematic targeted to specific offer compensation.

Regarding claim 85, Merriman et al. and Messer disclose the method of compiling transaction information of claim 83 wherein the data structure for the transaction information includes information related to the content site, and the method further includes crediting the content site with the transaction (Messer: page 13, line 24 to page 15, line 16). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of the Merriman et al. reference.   One would have been motivated to modify the method of compiling transaction information since collecting information regarding the various sales behavior would allows for a more accurate tracking and monitoring of the viewing and transaction session of the user and gain the benefit of a tier/scaling payment schematic targeted to specific offer compensation.

Regarding claim 86, Merriman et al. and Messer disclose the method of compiling transaction information of claim 83 wherein the data structure for the

transaction information includes information related to the advertisement, and the method further includes assessing effectiveness of the advertisement by counting a number of transactions related to the advertisement (Messer: page 13, line 24 to page 15, line 16). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of the Merriman et al. reference.   One would have been motivated to modify the method of compiling transaction information since collecting information regarding the various sales behavior would allows for a more accurate tracking and monitoring of the viewing and transaction session of the user and gain the benefit of a tier/scaling payment schematic targeted to specific offer compensation.

Regarding claim 87, Merriman et al. and Messer disclose the method of compiling transaction information of claim 83 wherein the data structure for the transaction information includes information related to a campaign during which the advertisement is provided, and the method further includes assessing effectiveness of the campaign by counting a number of transactions related to the campaign (Messer: page 13, line 24 to page 15, line 16). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of the Merriman et al. reference.   One would have been motivated to modify the method of compiling transaction information since collecting information regarding the various sales behavior would allows for a more accurate tracking and monitoring of the viewing and transaction session of the user and gain the benefit of a tier/scaling payment schematic targeted to specific offer compensation.

2.   Claims 79 and 84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merriman et al. and Messer in view of Angles et al. (5,933,811).

Regarding claim 79, Merriman et al. and Messer disclose the method of compiling transaction information of claim 78 but do not explicitly teach that wherein the cookie further includes information related to a time at which the selection of the advertisement has been made.   In an analogous art, Angles et al. discloses the use of cookies to gather information regarding the time at which the ad banner is selected (col 11, lines 5-49; col 15, line 65 to col 16, line 15 and col 20, lines 18-37).   Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of Merriman et al. and Messer.   One would have been motivated to modify the method of compiling transaction information since collecting information regarding the time of selection of the advertisement allows for a more accurate tracking and   monitoring   of   the   viewing   and   transaction   session   of   the   user.

Regarding claim 84, Merriman et al. and Messer disclose the method of compiling transaction information of claim 83 but do not explicitly teach wherein the data structure for the transaction information includes a time of the selection of the advertisement and a time of the transaction, and the method further includes comparing the time of the selection with the time of the transaction to assess time elapsed between the selection and the transaction.   In an analogous art, Angles et al. discloses gathering information regarding the time at which the ad banner is selected (col 11, lines 5-49; col 15, line 65 to col 16, line 15 and col 20, lines 18-37).   Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of Merriman et al. and Messer.   One would have been motivated to modify the method of compiling transaction information since collecting information regarding the time of selection of the advertisement and subsequently making a comparison between the elapsed time between the selection and the transaction allows for a more accurate tracking and   monitoring   of   the   viewing   and   transaction   session   of   the   user,   thus

collecting important information concerning the effectiveness of the pertinent architectural design.

3.   Claim 88 is rejected under 35 U.S.C. 103(a) as being unpatentable over Merriman et al. and Messer in view of Davis et al. (5,796,952).

Regarding claim 88, Merriman et al. and Messer disclose the method of compiling transaction information of claim 83 but do not explicitly teach wherein the data structure for the transaction information includes information related to an amount of time taken to make the transaction, and the method further includes assessing customer serving capabilities of the sale site by analyzing the amount of time taken to make the transaction. In an analogous art, Davis et al. discloses gathering information regarding tracking the user's interaction with a Web page by monitoring time (col 4, lines 37-54; col 8, lines 6-20). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of Merriman et al. and Messer. One would have been motivated to modify the method of compiling transaction information since collecting information regarding the elapsed time of the transaction allows for a more accurate tracking and monitoring of the viewing and transaction session of the user, thus collecting important information concerning the effectiveness of the pertinent architectural design of the merchant site and helping in future modifications to enhance the user's experience at the merchant site.

(10) Response to Argument

<u>Appellants' arguments.</u>

Appellants argue that neither Merriman nor Messer teaches the step of "providing the cookie from the user node to the ad server whenever the user makes a transaction at a sale site

associated with the advertisement" and indicates the BPAI decision stating that the cookie is edited at the merchant server (see pages 2 and 3).

Furthermore, appellants argue that the BPAI has established the missing features in the Messer reference by noting that the Merchant server is not equivalent to the ad server thus the editing at the Merchant server does not meet the claimed feature of formatting the cookie at the ad server (page 3).

Examiner's answers.

The examiner respectfully disagrees and notes that the alleged missing features can be mapped as follows:

(a) a cookie being sent from the user browser/node/computer to the ad server - the feature of "providing the cookie from the user to the ad server" and

(b) the connection between tracking/editing/formatting of the cookie at subsequent sale/merchant site and the selected displayed ad - the feature of "whenever the user make a transaction at a sale site associated with the advertisement"

It is noted that the cited reference of Merriman teaches:

(a) a "click through" process that sends a cookie from the user's browser to the ad server ("when the user clicks on the banner or other advertising object displayed by the user's browser 16, the user's browser again transmits a message to the ad server. The ad server notes the address of the computer of the browser (or any other identifier such as a cookie or a digital signature) that generated the message 23 and transmits back the URL of the advertiser's web page so that the users web browser 16 generates a message 26 to contact the advertiser's web site" § 19) - the feature of "providing the cookie from the user to the ad server" and

(b) the feature of tracking the "click through" occurrences ("The ad server process 19 also notes that a "click through" for an advertisement has occurred and updates the various databases in the manner described below. In the above scenario for the click through process,

the ad server process must remember which advertisement was sent to the user's browser in order to know where to redirect the user's browser." § 19).

However, the Merriman reference does not explicitly teach the feature of a transaction being the trigger event for tracking of the cookies at the ad server. In an analogous art, Messer teaches that tracking of cookies is well known in the art to determine the type and level of compensation given for an ad banner selection event (e.g. a "click through" without a purchase would lead to lower compensation to a "click through" resulting in a purchase). In particular, Messer teaches tracking a cookie originating from the user stemming from a click through event and the subsequent purchasing results (the presence or absence of a purchase) by the Merchant and the Clearinghouse ("During the linking process, the USER has an identifier query string appended to the HTTP entry, and possibly a "cookie" placed on their system. These act as a marker to permit tracking of the USER by the Merchant and Clearinghouse, determine if and when the USER was involved in a purchase, and how to allocate the purchase commission to the Site Owner." page 8, lines 12-14). Messer teaches that the tracking and editing cookies by various servers such as an ad server is a well known technological feature in the online marketing and accounting field thus meeting the claimed limitation of "whenever the user make a transaction at a sale site associated with the advertisement".

Thus a skilled artisan would have been motivated to modify the method of Merriman with the feature of compiling transaction information taught by Messer since collecting information regarding the various sales behavior would allows for a more accurate tracking and monitoring of the viewing and transaction session of the user and gain the benefit of a tier/scaling payment schematic.

Furthermore, it is noted that a broad and reasonable interpretation of the "ad server" feature would be met by a server that provides advertisement thus both the Merchant and the Clearinghouse are deemed to be "ad server" since Messer teaches that the components of the advertisement are provided by the Merchant and the Clearinghouse (page 10, liens 3-5; page

12, lines 4-5; page 13, lines 1-17).   Alternatively, it is noted that the features associated with an

ad server is taught by the Merriman reference and the Messer reference is provided to teach the

accounting features of tracking the sale purchasing events.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related

Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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